

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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ENCOMPASS INSURANCE COMPANY, as
SUBROGEE OF JUAN POLANCO AND
MARTINA FERNANDEZ,

Docket # 07-CV-3857(SCR)

Plaintiff,

-against-

ANSWER

DELIMA CONTRACTORS, INC., GENE
DE OLIVERIA, INDIVIDUALLY, and d/b/a
OLIVEIR CONTRACTING & ALBERT
PALANCIA AGENCY, INC.,

Defendants.
-----X

Defendant, DELIMA CONTRACTORS, INC., by its attorney, MARIO
DEMARCO, as and for its Answer to the Complaint, alleges upon information and belief
as follows:

THE PARTIES

1. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations numbered "1" of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations numbered "2" of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations numbered "3" of the Complaint.
4. Admits the allegations set forth in Paragraph numbered "4" of the
Complaint.

5. Admits the allegations set forth in Paragraph number "5" of the Complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations numbered "6" of the Complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations numbered "7" of the Complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations numbered "8" of the Complaint.
9. Admits the allegations set forth in Paragraph numbered "9" of the Complaint.
10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph numbered "10" of the Complaint.
11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph numbered "11" of the Complaint.

JURISDICTION AND VENUE

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph numbered "12" of the Complaint.
13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph numbered "13" of the Complaint.

FACTUAL ALLEGATIONS

14. With regard to the allegations contained in Paragraph numbered "14" of the Complaint, the answering Defendant repeats each and every response contained in Paragraphs "1" through "13" inclusive of this Answer, as if fully set forth at length herein.
15. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "15" of the Complaint.
16. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "16" of the Complaint.
17. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "17" of the Complaint.
18. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "18" of the Complaint.
19. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "19" of the Complaint.
20. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "20" of the Complaint.
21. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "21" of the Complaint.
22. Denies knowledge or information to form a belief as to the truth of the allegations contained in Paragraph numbered "22" of the Complaint.

23. Admits the allegations set forth in Paragraph "23" of the Complaint.
24. Denies the allegations set forth in Paragraph "24" of the Complaint.
25. Denies the allegations set forth in Paragraph "25" of the Complaint.
26. Denies the allegations set forth in Paragraph "26" of the Complaint.
27. Denies the allegations set forth in Paragraph "27" of the Complaint.
28. Denies the allegations set forth in Paragraph "28" of the Complaint.
29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "29" of the Complaint.
30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "30" of the Complaint.
31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "31" of the Complaint.
32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "32" of the Complaint.
33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "33" of the Complaint.
34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "34" of the Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "35" of the Complaint.
36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "36" of the Complaint.
37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "37" of the Complaint.
38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph numbered "38" of the Complaint.

**FIRST CAUSE OF ACTION
NEGLIGENCE
AGAINST DEFENDANTS DELIMA AND OLIVEIRA**

39. With regard to the allegations set forth in Paragraph "39" of the Complaint, the answering Defendant repeats and realleges each and every response contained in Paragraphs numbered "1" through "38" at length herein.
40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "40" of the Complaint.
41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "41" of the Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "42" of the Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "43" of the Complaint.

SECOND CAUSE OF ACTION
NEGLIGENCE

44. With regard to the allegations contained in Paragraph number "44" of the Complaint, the answering Defendant repeats and reiterates each and every response contained in Paragraphs numbered "1" through "43" inclusive of this Answer, with the same force as if fully set forth herein.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "45" of the Complaint.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "46" of the Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "47" of the Complaint.

- 48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "48" of the Complaint.
- 49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "49" of the Complaint.
- 50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "50" of the Complaint.
- 51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph numbered "51" of the Complaint.

**THIRD CAUSE OF ACTION
BREACH OF CONTRACT
AGAINST DEFENDANT'S DELIMA AND OLIVEIRA**

- 52. With regard to the allegations contained in Paragraph numbered "52" of the Complaint the answering Defendant repeats and realleges each and every response contained in Paragraphs numbered "1" through "51" of this Answer, with the same force as if fully set forth herein.
- 53. Denies the allegations as asserted against Defendant DeLima Contractors, Inc. contained in Paragraph numbered "53" of the Complaint.
- 54. Denies the allegations as asserted against Defendant DeLima Contractors, Inc. contained in Paragraph numbered "54" of the Complaint.

55. Denies the allegations as asserted against Defendant DeLima Contractors, Inc. contained in Paragraph numbered "55" of the Complaint.

56. Denies the allegations as asserted against Defendant DeLima Contractors, Inc. contained in Paragraph numbered "56" of the Complaint.

**FORTH CAUSE OF ACTION
MISREPRESENTATION AND FRAUDULENT INDUCEMENT
AGAINST ALL DEFENDANTS**

57. With regard to the allegations contained in Paragraph numbered "57" of the Complaint, the answering Defendant repeats and reinstates each and every response contained in Paragraphs numbered "1" through "56" inclusive, of this Answer, as if fully set forth herein.

58. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "58" of the Complaint.

59. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "59" of the Complaint.

60. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "60" of the Complaint.

61. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "61" of the Complaint.
62. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "62" of the Complaint.
63. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "63" of the Complaint.
64. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "64" of the Complaint.
65. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "65" of the Complaint.
66. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "66" of the Complaint.

67. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "67" of the Complaint.

68. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "68" of the Complaint.

69. Denies the allegations as asserted against Defendant DeLima Contractors, Inc., and denies knowledge or information sufficient to form a belief as to the truth of the allegations asserted against the remaining Defendants contained in Paragraph numbered "69" of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The allegations set forth in the Complaint fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed as there is no privity of contract nor basis to assert any claim against DeLima Contracting, Inc.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's action is barred by the applicable Statute of Limitations.

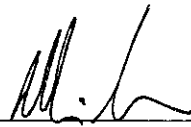
JURY DEMAND

Defendant, DeLima Contracting, Inc., demands a jury on all issues herein stated.

WHEREFORE, Defendant demands judgment as follows:

- (a) The causes of action by Plaintiff against Defendant DELIMA be dismissed;
- (b) Judgment be awarded to Defendant DELIMA based on its Affirmative Defenses;
- (c) Such other and further relief as the Court deems just and proper.

Dated: Port Chester, New York
December 15, 2007



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